

**CITY OF SEATTLE REFORM PLAN PROPOSAL
CONFIDENTIAL SETTLEMENT COMMUNICATIONS**

I. INTRODUCTION

1. The United States and the City (collectively “the Parties”) recognize that the vast majority of the City’s police officers are honorable law enforcement professionals who risk their physical safety and well-being for the public good. The Parties enter into this Reform Plan (or “Agreement”) with the goal of ensuring that SPD’s police services are delivered to the people of Seattle in a manner that effectively ensures officer and public safety, and fully complies with the Constitution and laws of the United States. The United States commends the City for the steps it already has taken to implement reforms to effectuate these goals.

A. Background

2. The Parties note that the Department of Justice (“DOJ”) investigation was conducted in collaboration and with the full and open cooperation of the City and SPD. The City timely provided the United States with access to its documents, information, and personnel. This Agreement is the product of a continued cooperative effort built on the Parties’ mutual and deeply-held commitment to constitutional policing.

3. In March 2011, DOJ formally notified the City that it was initiating an investigation of an alleged pattern or practice of excessive force and discriminatory policing in SPD, pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (“Section 14141”); the anti-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d (“Safe Streets Act”); and Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d (“Title VI”).

4. DOJ issued a written report of its findings (“Report”) on December 16, 2011. The Report conveyed DOJ’s finding that it had reasonable cause to believe that SPD engages in a pattern or practice of using unnecessary or excessive force in violation of the Fourth Amendment to the United States Constitution and Section 14141.

5. The City does not admit nor agree with DOJ’s findings and conclusions. It enters into this Agreement because it wishes to ensure that its police department is functioning at an exceptional level and that it has positive relationships with all its

communities. To achieve these goals, the City will ensure its police department's policies and procedures are based on recognized standards of the policing profession, legal and constitutional standards, research and evidence, department and community values, and internal and external collaboration. The Parties agree that the use of force reforms contained in this Agreement reflect those principles.

6. The City enters into this Reform Plan to avoid the cost, delay, and effect on the City's interests of protracted litigation. Nothing in this Agreement shall be construed as an acknowledgment, agreement, admission, statement or evidence of liability of the City, SPD or any of its officers or officials under 42 U.S.C § 14141. Nor shall the Agreement constitute or be construed as an acknowledgement, agreement, admission, statement or evidence of any violation of applicable law or of the existence of a pattern or practice of conduct by law enforcement officers of the City that deprives persons of rights, privileges, and immunities secured or protected by the Constitution and laws of the United States. Nor does the Agreement constitute an admission that any individual complaint reviewed by DOJ was meritorious or improperly addressed by SPD.

B. General Provisions

7. This Agreement is effectuated pursuant to the authority granted to DOJ under Section 14141 to seek declaratory or equitable relief to remedy a pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges, or immunities secured by the Constitution or federal law.

8. The Parties agree that nothing in this Agreement, the United States' Complaint, or the negotiation process shall be construed as an admission of wrongdoing by the City or evidence of liability under any federal, state, or municipal law.

9. This court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1345. The United States is authorized to initiate this action pursuant to 42 U.S.C. § 14141. Venue is proper in the Western District of Washington pursuant to 28 U.S.C. § 1391, because the City and SPD are located in and the claims arose in the Western District of Washington.

10. This Agreement, which includes the policies, procedures and training agreed to by the Parties, shall constitute the entire integrated agreement of the Parties. No prior drafts or prior or contemporaneous communications, oral or written, shall be

relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.

11. This Agreement is enforceable only by the Parties. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. The Parties agree to defend the terms of this Agreement, should they be challenged in this or any other forum.

12. This Agreement is not intended to impair or expand the right of any person or organization seeking relief against the City, SPD, or any officer or employee thereof, for their conduct or the conduct of SPD officers; accordingly, it does not alter legal standards governing any such claims by third parties, including those arising from city, state, or federal law. This Agreement does not expand, nor will it be construed to expand, access to any City, SPD, or DOJ documents, except as expressly provided by this Agreement, by persons or entities other than DOJ, the City and SPD, and the Monitor. All federal and state laws governing the confidentiality or public access to such documents are unaffected by the terms of this Agreement.

13. Nothing in this Agreement is intended to: a) alter the existing collective bargaining agreements between SPD and the Seattle Police Officer's Guild, and between SPD and the Seattle Police Management Association; or (b) impair the collective bargaining rights of employees under State and local law. Nothing in this Agreement is intended to amend or supersede any provision of state or local law.

14. The City shall be responsible for providing necessary support and resources to SPD to enable SPD to fulfill its obligations under this Agreement.

II. POLICIES AND PROCEDURES

15. The City has created and DOJ has approved the policies, procedures and training materials referenced in this Agreement in advance of executing this Agreement.

16. With the assistance of the Monitor, SPD shall review each policy or procedure required by this Agreement 180 days after it is implemented, and annually thereafter (on a regularly published schedule), to ensure that the policy or procedure continues to provide effective direction to SPD personnel and remains consistent with the

purpose and requirements of this Agreement, best practices, current law, and professional standards.

17. SPD shall apply policies uniformly and hold officers accountable for complying with SPD policy and procedure.

III. RESPONSE TO RESISTANCE

A. Response to Resistance Definitions

18. “Case Master” means an experienced command-level officer appointed by the Investigations Chief in consultation with the Homicide Commander. When a case is bifurcated due to possible criminal liability on behalf of an officer, the Case Master is responsible for ensuring the Clean Team is not exposed to any information obtained or derived from a compelled statement. The Case Master also controls what information may be shared between the Clean Team and the Exposed Team and how that information is exchanged.

19. “CED” means Conductive Energy Device.

20. “City” means the City of Seattle, including its agents, officers, and employees in their official capacity.

21. “DOJ” means the United States Department of Justice’s Civil Rights Division, the USAO, and its agents and employees in their official capacity.

22. “Clean Team” means an investigative team that has not been privy to any information derived from a compelled statement. This always entails being immediately relocated outside of the Homicide Office.

23. “COP” means the Chief of Police of SPD.

24. “Court” means the United States District Court Judge for the Western District of Washington presiding over this case.

25. “Critical Firearm Discharge” means each discharge of a firearm by a SPD officer as defined by SPD Manual 8.060. This term includes discharges at persons where no one is struck.

26. “Effective Date” means the day this Agreement is entered by the Court.

27. “EIS” means the Early Intervention System.

28. “Exposed Team” means an investigative team that has been exposed to information that was derived from an officer’s compelled statements. To protect the

ability of the case to be criminally charged, the Exposed Team can only be responsible for the administrative investigation.

29. “Firearm” means any instrument capable of discharging a bullet or shot as defined in SPD Manual 8.030.

30. “Firearms Review Board” or “FRB” means the Board that investigates firearms discharges as described in SPD Manual 11.030.

31. “Force Investigation Team” or “FIT” means the newly created SPD unit tasked with conducting investigations of (1) all Type III Response to Resistance, except for critical firearms discharges; (2) uses of force that appear to the supervisor at the scene to potentially involve criminal liability on the part of the officer; and (3) uses of force reassigned to FIT by any SPD supervisor, the COP, his/her designee or the OPA.

32. “Full Restraint Position” means placing a person with hands secured behind the back, legs secured together, and the legs and hands connected together behind the back of the subject with the subject’s legs flexed at the knees. The length of the containment strap used to secure the hands to the feet will be such that the lower legs are at an approximate 90° angle in relation to the person’s torso.

33. “Great Bodily Harm” means “an injury that causes serious permanent disfigurement, loss or impairment of any body part, or which creates a probability of death” as defined in RCW 9A.04.110.

34. “Injury” means bodily harm beyond temporary transient pain or redness.

35. “Less Lethal Device” means a device that is not expected or intended to cause death or serious injury when properly applied consistent with training.

36. “Less Lethal Force” means a level of force such that the outcome is not expected or intended to cause death or serious injury.

37. “Lethal Force” means “the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury” as defined in RCW9A.16.010(2).

38. “Monitor” means a person who shall be selected by the DOJ and the City to monitor and report on implementation of this Agreement.

39. “Necessary Force” means that “no reasonably effective alternative to the use of force appeared to exist and the amount of force used was reasonable to effect the lawful purpose intended as defined in RCW 9A.16.0101.

40. “Personnel” means SPD officers and employees.

41. “Police Officer” or “Officer” means any law enforcement agent employed by SPD, including supervisors.

42. “Policies and Procedures” means regulations or directives, regardless of the name, describing the duties, functions, and obligations of SPD officers and/or employees, and providing specific direction in how to fulfill those duties, functions, or obligations.

43. “Precinct” means one of the five police service areas of SPD, which together cover the entire geographic area of the City of Seattle and each of which is led through the chain-of-command by a precinct commander.

44. “Response to Resistance” means an officer’s use of force in performance of official duties.

45. “Response to Resistance Review Board” or “RRRB” means the SPD team that assists the Assistant Chief of Operations in reviewing all use of force reports and identifying patterns and training needs.

46. “SPD” or “Department” means the Seattle Police Department and its agents, officers, supervisors, and employees (both sworn and unsworn) in their official capacity.

47. “Type I Response to Resistance” means the use of minor physical force that is not reasonably expected to cause injury and does not result in an actual injury or complaint of an injury. This force would most commonly occur when an officer uses a pain compliance or take-down technique to respond to an individual who resists by physically interfering with an officer’s lawful objective. Pointing a firearm at a person is a Type I response. Un-holstering or displaying a firearm without pointing it at a person, or simply displaying any weapon, does not rise to the level of a Type I response.

48. “Type II Response to Resistance” means a use of force which causes an injury, could reasonably be expected to cause an injury, or results in a complaint of an injury, but does not rise to the level of a Type III Response to Resistance. Examples of

this type of force include: any type of strike or kick; use of an intermediate level weapon; CED deployment of any type; use of an impact weapon (including batons and flashlights); deployment of canine that results in an injury or complaint of injury; and placing a subject in a “full restraint position.”

49. “Type III Response to Resistance” means all uses of force by a SPD officer that have the possibility of significant or life-altering injuries to a subject including: (1) any use of “Lethal Force”; (2) any use of force that results in “Great Bodily Harm” or “Substantial Bodily Harm”; or (4) any use of force referred by a supervisor or the RRRB to FIT and determined by FIT to be a Type III response. Examples of this type of force include: force that results in broken bones, stitches, loss of consciousness, or an admission to the hospital for treatment; the application of a neck hold (LVNR or Lateral Vascular Neck Restraint); the use of a less-lethal weapon other than Oleoresin Capsicum Spray (“OC Spray”), Conductive Energy Devices (CED or Taser), less lethal munitions (flashlight, baton, or other object) to strike the head or neck; force applied when subject behavior indicates possible “excited delirium” (statements, actions, elevated body temperature); force used when an individual dies while in police custody.

50. “SPD Manual” means to SPD’s Policy and Procedure Manual, revised May 21, 2011.

51. “SPD Unit” or “Unit” means any designated organization of officers within SPD, including precincts and specialized units.

52. “Substantial Bodily Harm” means “an injury that causes serious permanent disfigurement, loss or impairment of any body part, or which creates a probability of death” as defined in RCW 9A.04.110.

53. “Supervisor” means a sworn SPD employee at the rank of sergeant or above (or anyone acting in those capacities) and non-sworn personnel with oversight responsibility for other officers.

54. “Training” means any adult-learning methods that may incorporate role-playing scenarios and interactive exercises that instruct officers about how to exercise their discretion, as well as traditional lecture formats. Training also includes testing and/or writings that indicate that the officer comprehends the material taught.

B. Response to Resistance Principles

55. Police use-of-force is *reactive* and occurs in response to the actions and behavior of the subject with whom they are interacting. Thus, the Department's policy for defining, classifying, and reporting use-of-force by police officers will be labeled "*Response to Resistance*" policy. Police officers must use force only to stop, modify, or compel behavior in order to fulfill a lawful objective.

56. Police use of force must comply with the Fourth Amendment's requirement of objective reasonableness. In *Graham v. Connor*, the Supreme Court determined that police use-of-force must be evaluated from the standpoint of a reasonable officer at the scene and take into account that decisions to use force are often split-second, and made under extreme stress. Officers are not required to use the least intrusive method, as long as the method used is objectively reasonable.

57. Officers' actions must be procedurally just, effective, constitutional, and safe. The Response to Resistance model seeks to assist officers in achieving this balance in the application of force. In order to achieve this, the Department commits to creating a police force that is highly trained and knowledgeable, not only on matters of law, but also on matters of force science, and to educating the public to better understand the reality of police use-of-force.

58. In any response to resistance, officer decisions will be evaluated by the legal standard defining necessary force, i.e., "no reasonably effective alternative to the use of force appeared to exist, and the amount of force used was reasonable to affect the lawful purpose intended." RCW 9A.16.010(1). Reasonable and effective means to reduce the level of force shall be employed where possible, for example, through the integration of the Crisis Intervention Team officers as part of a comprehensive response to resistance.

C. Weapon-specific Policies

59. The Parties have agreed to SPD's weapons-specific policies before execution of this Agreement. SPD's Response to Resistance policies, and any revisions to these policies, shall follow the guidelines contained in this section of the Agreement regarding weapons specific policies and training.

60. The Response to Resistance policies shall address the use and deployment of all force weapons, both lethal and less-lethal, that are available to SPD officers. The specific policies for each force weapon shall provide guidance for each weapon's use.

61. The weapon-specific policies shall continue to include training and certification requirements that each officer must meet before being permitted to carry and use the authorized weapon. Officers shall only carry weapons authorized by the Department.

62. SPD shall implement policies for each of the following weapons using these guidelines.

a. Firearms

63. Officer Discharges of Firearms shall continue to track critical firearms discharges in EIS as uses of force, SPD shall continue to document critical firearms discharges in SPD's annual use of force report, and the OPA Director's use of force reports.

b. Conductive Energy Devices (CED or Taser)

64. The CED policy will continue to contain the training and tactics guidance regarding Less-Lethal Options and SPD's Annual CED Recertification Course, and other sources and shall address: 1) when officers should give oral warnings to subjects before use; 2) when officers should reevaluate before applying subsequent cycles; 3) the risks of prolonged or repeated exposure and procedures following CED use; 4) required documentation in a use of force report; 5) appropriate use of CEDs in the "drive stun" mode; 6) consideration of the apparent condition of the potential subject, including pregnancy, restraint, and frailty; 7) and situational hazards that could lead to unintended serious injury or death.

65. Officers shall continue to receive annual CED certifications consisting of physical competency, weapon retention, SPD policy, including any policy changes, technology changes, and scenario-based training.

66. SPD shall continue to implement integrity safeguards on the use of CEDs to ensure compliance with SPD policy, including conducting random and directed audits of CED deployment data. The audits shall compare the downloaded data to the officer's

report on use of force. Discrepancies within the audit will be addressed and appropriately investigated.

67. When a supervisor or the FIT conduct investigations of CED use in Tier II or Tier III investigations, the investigator shall assure that the use of force report thoroughly describes each CED application and shall download and analyze the CED data related to that deployment and include this analysis in the use of force report.

68. SPD will continue to track CED applications as uses of force in EIS and continue to include CED data and analysis in its use of force annual report.

c. Oleoresin Capsicum Spray (“OC Spray”)

69. The Department shall update its policies concerning the use of OC spray. Any updates will directly address deployment of OC spray on an individual and the deployment of OC spray as a crowd dispersal tool. In both circumstances, it will be necessary to articulate the behavior from the individual or crowd that justifies the use of OC spray. Updates will also direct procedures that minimize the exposure of non-targeted individuals and make decontamination of exposed subjects a continued priority. When appropriate, training specific to each model or type of OC device will be required before use, as stand-off distances differ based on the model of dispersal device used.

70. The OC Spray policy and training shall incorporate the evolving guidance contained within the SPD Post-Basic Law Enforcement Academy (“BLEA”) course on Less-Lethal Force as well as guidance from the medical community. The policy and training will address the following: 1) circumstances in which use of OC Spray is considered reasonable including for crowd dispersal and protection; 2) guidelines and requirements governing when officers will give oral warnings; 3) when to reevaluate the situation before continued use of spray; 4) use of OC Spray on unresisting, handcuffed or otherwise restrained persons; and 5) guidance contained in SPD’s policy on “Use of Chemical Agents in Civil Disobedience, Crowd or Riot Situations Involving Unlawful Activity.”

71. Officers shall be trained in and follow protocols developed by SPD on their responsibilities following OC Spray use. Officers shall continue to request medical response or assistance for subjects exposed to chemical spray when they complain of continued effects after having been decontaminated, or they indicate that they have a pre-

existing medical condition (e.g., asthma, emphysema, bronchitis, heart ailment, etc.) that may be aggravated by chemical spray.

72. Officers shall use only agency-issued and approved OC Spray.

73. SPD shall continue to maintain written documentation of the number of OC Spray canisters annually distributed to, and utilized by, each officer. Analysis of this data shall continue to be included in SPD's use of force annual report and tracked in EIS as a use of force.

d. Impact Weapons

74. The Department will incorporate in its Response to Resistance policies specific provisions concerning the use of impact weapons and determine guidelines for use. Officers will be trained and certified for department-approved impact weapons before being issued and authorized to carry these weapons. Officers shall also be recertified at reasonable intervals. Use of any improvised impact weapons will fall under the same guidelines and officers will be required to articulate how the use of the weapon was objectively reasonable. Impact weapon use will be limited to situations in which such force is reasonable and consistent with training, for example, when it is necessary to protect the officer, the subject, or another party from immediate physical harm.

75. FIT shall investigate impact weapon strikes to head, neck and other vital areas. Passive use of impact weapons (e.g., as a defensive weapon or as a means of overcoming resistance, as when it is used in the two hand horizontal thrust on a police line; or as a mean to gain compliance in crowd control scenarios) will be investigated as a Type I or II Response to Resistance.

76. Consistent with current training and policy, impact weapons should not be used on handcuffed or otherwise restrained persons, persons under control, or persons complying with police direction.

D. Response to Resistance Reporting and Investigation

77. The response of officers to subject resistance shall be divided into three types or tiers for reporting, investigative, and review purposes. The goal is to ensure that police resources are focused on the most important cases, while allowing flexibility to ensure that cases are not under-classified. The three types of response to resistance will

be reported and investigated based on a three-tiered approach that is consistent with the manner in which courts discuss law enforcement use of force.

78. The three types of response to resistance correspond to amount of force used and the outcome of the force. The categorization of these types response to resistance are based on the factors that courts rely on in gauging the appropriateness of force such as: degree of injury caused, potential of the technique or weapon to cause injury, degree of pain experienced, degree of disability experienced by the subject, degree of restriction of freedom, impairment of the functioning of any organ, duration of force, and physical vulnerability of the subject.

79. The three types of response to resistance will each have a different tier of department response that become more rigorous with the seriousness of the force used. Each tier will have four essential components:

- a) Initial reporting: each tier has reporting and documentation requirements that include the immediate action required at the scene.
- b) Investigation: each tier has investigation requirements that detail how the investigation is conducted and who is responsible for the investigation
- c) Review: each tier will have a review process requiring critical examination of the incident to assess its appropriateness, as well as identify any shortcomings in policy, procedure, training, and tactical performance. The review process will also describe how information gathered on the incident could be used to increase the effectiveness of the officer and the Department as a whole.
- d) Record keeping and corrective action: for each tier, the facts regarding the incident will be stored, reported, and analyzed, and any deficiencies or concerns addressed.

80. Officers shall notify their supervisor as soon as practicable following any use of Type I, II or III Response to Resistance.

81. Consistent with other policies, a supervisor can always opt to require a higher tier response to a given incident. Factors to consider in determining whether a higher tier response is appropriate include: force used against a handcuffed or otherwise restrained, under control or in custody subject; force against pregnant or vulnerable

subjects (e.g. age or infirmity); incidents resulting from faulty information or unintentional error; and when it is unclear whether the officer acted consistent with policy or law.

82. When multiple officers are involved in a response to resistance incident, the entire incident will be reported and investigated at the highest tier reached by any single officer during the incident. All involved officers will be required to submit statements in accordance with that tier's requirements. For example, if four officers are restraining a subject's limbs and only use Type I force, and a fifth officer uses a CED, each officer must submit a statement as required under at least the Type II protocol.

83. Each supervisor reviewing the incident is responsible for ensuring a full and accurate account of the incident, and identifying and resolving any inconsistencies or alternatively, immediately bringing them to the attention of OPA or his/her supervisor.

84. Whenever a supervisor uses any type of response to resistance, the investigation will be conducted by an uninvolved supervisor of equal or higher rank.

85. SPD shall continue to routinely, but no less than annually, analyze the force data captured in officers' force reports and supervisors' investigative reports to determine significant trends; to identify and correct deficiencies revealed by the analysis; and to document its findings in an annual public report.

E. Tier I Reporting and Investigation Requirements

86. Officers shall document a Type I Response to Resistance in a trackable document that contains the following information: 1) a detailed account of the officer's actions in making the physical contact 2) the reason the force was used including the suspect's actions; 3) the identity of the officer who made physical contact; 4) and the name of the supervisor screening the incident. The officer's immediate supervisor will review the documentation and direct the officer to supply more information, if needed.

87. A Type I response must be screened by an on-duty supervisor prior to the subject being released or the contact concluded. If the subject is in custody, the supervisor shall interview him/ her about the Type I response while screening the arrest.

88. The supervisor will determine if the Response to Resistance is appropriately classified as a Type I incident. If the supervisor is unable to make that determination, the supervisor shall consult with the FIT or his/her direct supervisor to

assist in the determination. The supervisor will also evaluate the incident for any other concerns (tactical, threat assessment, etc.). The supervisor will address any concerns with the officer involved. If any evidence of misconduct or criminal activity is discovered, the supervisor will ensure that the OPA is contacted and consult the FIT team regarding reclassification of the incident as Type II or III.

F. Tier II and III Reporting Requirements

89. For Type II and Type III Response to Resistance, all involved officers shall complete an officer statement using descriptive language. The statement shall include: 1) the reason for the initial police presence; 2) a detailed description of the incident circumstances, including the words, actions, and/or threat posed by the suspect warranting the need for force; 3) a detailed description of the force used by the officer giving the statement; 4) a detailed description of the force used by other officers if clearly observed; 5) a description of any apparent injury to the suspect, any complaint of injury, or the lack of injury, including information regarding any medical aid or medical evaluation provided.

G. Supervisory Investigations of Type II Response to Resistance

90. Upon notification of a Type II Response to Resistance, the direct supervisor of the officer(s) using force shall respond to the scene and shall thoroughly investigate all Type II responses. No supervisor who participated in, or ordered the force being investigated, shall conduct or be involved in conducting the investigation of the incident. The investigating supervisor at a use of force incident shall:

- a) Respond to the scene, examine the subject of the force for injury, interview the subject for complaints of injury, and where necessary, ensure that the subject receives medical attention from an appropriate medical provider.
- b) If the subject does not require medical attention, and probable cause exists for his/her arrest, the supervisor will arrange for transport to a police holding facility.
- c) The supervisor shall obtain sufficient basic information to determine if a FIT response is appropriate. In every incident involving a Type III Response to Resistance, or any use of force

indicating possible criminal conduct by an officer, the supervisor shall ensure that FIT is notified. A supervisor retains the discretion to refer any use of force to FIT for FIT's determination of whether to take investigatory responsibility over the matter.

- d) Whenever there is an indication of, or the potential for, a possible criminal conduct investigation involving an officer, the officer shall not be directed to provide a statement.
- e) If a FIT response is not appropriate, the supervisor will conduct the investigation, as an impartial fact-finder and will not be responsible for determining the ultimate disposition of the incident.

The supervisor shall:

- (1) Identify and secure evidence to enable the supervisor to describe in detail the use of force and the facts and circumstances surrounding it.
- (2) Ensure collection of evidence sufficient to establish material facts related to the use of force, including, where possible, physical evidence, audio and video recordings, photographs, and other documentation of injuries or the absence of injuries.
- (3) Make reasonable attempts to locate relevant civilian witnesses including the subject and third parties, and arrange for witnesses to be interviewed. Supervisors will use interview techniques taught in use of force investigation courses, including avoiding leading questions.
- (4) Where practicable and warranted in the circumstances, investigating supervisors shall ensure that all interviews with civilian witnesses are recorded. Interviews of the subject, or the subject's refusal to be interviewed, will be audio or ICV recorded, if possible.
- (5) Officers involved in a use of force incident shall be interviewed separately.

- (6) Require each officer at the scene to complete either a witness statement (if they did not use Type II responses to resistance) or a Response to Resistance Statement (if they did use Type II response). Each officer will describe what he/she did and saw as comprehensively and descriptively as possible and in the context of the use of force by other officers, identifying all other officers involved in the incident when possible. The supervisor will assure such statements comply with SPD guidelines.
- (7) Review any ICV or holding cell video related to the incident, and red flag for retention ICV that documents contact with the subject.
- (8) Canvass the area for privately-owned video that may have captured the contact, and attempt to obtain copies voluntarily. If owner refuses, document the location and/or owner of the video. If no privately owned video is discovered, document that none was found.
- (9) Photograph the location where the incident occurred, to determine damage, and ensure that relevant evidence is collected. Photograph any officer injuries or areas of complained injury, and any damaged government or private property.
- (10) Respond to the subject's location, and photograph the subject for identification purposes and any visible injuries or places where the subject complains of injury.
- (11) Consider all relevant evidence, including circumstantial, direct, and physical evidence and make credibility determinations and resolve material inconsistencies in statements, if feasible. When possible, assess the subject's injuries and determine whether the subject's injuries are consistent with the force reported used by the officer(s).

- (12) When a supervisor concludes that there may have been misconduct, the supervisor shall consult with an on-duty commander of the permanent rank of lieutenant or above and ensure that OPA is notified.

H. Supervisor's Force Investigation Report for Type II Response to Resistance

91. An email notification of a reportable Response to Resistance shall be forwarded to the involved officer's Bureau Commander via the chain of command by the end of the shift during which the force occurred. The email notification shall contain basic information concerning the incident and document the supervisor's preliminary concerns, if any, about the appropriateness of the use of force.

92. Each supervisor shall complete and document a use of force supervisory investigation using a Supervisor's Force Investigation Report (a revised form 1.40b) within 72 hours of learning of the use of force, unless an extension is approved by the supervisor's commanding officer. The Supervisor's Report shall include the following:

- a) The supervisor's narrative description of the incident. A supervisor's narrative shall detail every use of force used by every officer and subject, and every injury sustained by the subject and officer, and shall describe the sequence of events from each officer's use of force statements and other evidence to "make sense" of what happened. Such analysis will provide a commander reviewing the supervisor's analysis a complete understanding of the incident from beginning to end, including, crucially, when each officer used force, why the force was necessary at each point in time, and how each injury, if any, occurred.
- b) The report shall be accompanied by the use of force packet which contains documentation of all evidence that was gathered, including physical evidence; photographs; and names, phone numbers, addresses, and summaries of statements by all civilian witnesses to the incident. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but the author of the

report did not determine the identification, phone number, or address of those witnesses, the report shall state the reasons why.

- c) The names of all other SPD employees witnessing the use of force and summaries of their statements.
- d) The investigating supervisor's evaluation of credibility determinations and material inconsistencies in statement.

I. Type II Response Report Review by Chain of Command

93. SPD Policy 6.240.XII.B.11 already establishes a process by which the use of force packet is forwarded through the chain of command to the involved employee's bureau commander. SPD shall revise and clarify the process for review of a use of force report to incorporate the process detailed in this section of this Agreement.

94. Upon completion of the Supervisor's Response to Resistance investigation Report and packet, the investigating supervisor shall forward the packet through the chain of command. Each higher level supervisor in the chain will review the report to ensure that it is complete and that the findings are supported by a preponderance of the evidence.

95. Any supervisor in the chain of command shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings. Where the findings are not supported by a preponderance of the evidence, any supervisor in the chain of command shall modify the findings after consultation with the investigating supervisor, and document the reasons for this modification, including the specific evidence or analysis supporting the modification. Any supervisor in the chain of command shall counsel the investigating supervisor regarding the modification and any investigative deficiencies that led to it, and initiate corrective action where appropriate. Every supervisor in the chain of command is responsible to assure the accuracy and completeness of the Investigation Reports completed by supervisors.

96. When the precinct commander finds that the investigation is complete and the findings are supported by the evidence, the investigation file shall be forwarded to the Assistant Chief of Patrol Operations and the Response to Resistance Review Board (RRRB).

97. At the discretion of the officer's chain of command or OPA, a response to resistance investigation may be assigned or re-assigned for investigation to FIT or to another supervisor, whether within or outside of the precinct in which the incident occurred, or may be returned to the Unit for further investigation or analysis. Where, after investigation, a response to resistance is found to be out of policy, or the investigation of the incident is lacking, the COP shall direct and ensure appropriate corrective action, if warranted. When the response to resistance indicates policy, training, tactical, or equipment concerns, the COP shall ensure also that necessary training is delivered and that policy, tactical, or equipment concerns are resolved.

J. Force Investigation Team (FIT) Investigation of Type III Response to Resistance

98. The FIT will conduct investigations of (1) all Type III Responses to Resistance, except for firearms discharges (which will continue to be investigated by the Homicide Unit and reviewed by the FRB); (2) a use of force referred to FIT by any supervisor or OPA; and (3) a use of force indicating potential criminal conduct by an officer. Response by FIT to a scene does not assume a criminal or administrative violation has occurred.

99. Type III Response to Resistance will be investigated and documented by the FIT, with assistance from the Patrol sergeant. The FIT response will be tailored to the circumstances but will normally include one to three FIT detectives, the FIT sergeant and a Homicide Unit command level officer. At least one member of FIT or a homicide supervisor shall be available at all times to evaluate referrals from an officer's supervisors.

100. If a FIT investigation, at any point, reveals officer misconduct, a FIT supervisor shall contact OPA.

101. SPD shall create a FIT training curriculum and procedural manual before execution of this Agreement.

102. The supervisor shall have the following responsibilities in responding to a Type III response to resistance:

- a) A sworn supervisor shall respond to the scene, and will ensure that appropriate medical aid is summoned for any injured party, either subject

or officer. If the subject is transported to a hospital, the supervisor will arrange for a hospital guard for the subject, if appropriate.

- b) The supervisor shall obtain sufficient basic information to determine whether a FIT response is appropriate and contact the FIT sergeant to screen a response.
- c) Whenever there is an indication of, or the potential for, a possible criminal conduct investigation involving an officer, the officer shall not be directed to provide a statement.
- d) The supervisor will ensure the scene is contained and will turn the scene over to the arriving FIT personnel. The scene will be left intact and will be processed by FIT personnel.
- e) The supervisor shall make reasonable attempts to locate civilian witnesses to the event, and identify and request the witness's standby for the FIT personnel's arrival.

103. The FIT shall have the following responsibilities in responding to a Type III response to resistance:

- a) FIT personnel will take control of the scene upon their arrival.
- b) Where possible, FIT detectives shall ensure that all interviews with civilian witnesses are recorded.
- c) FIT personnel will arrange for a canvass for any privately-owned video that may have captured the contact, and attempt to obtain copies voluntarily. If owner refuses, document the location and/or owner of the video. If no privately owned video is discovered, document that none was found.
- d) The FIT supervisor will arrange for photographing and processing of the scene.
- e) FIT detectives will respond to the subject's location, and request a medical release if relevant, as well as an audio-recorded interview. They will also photograph areas of injury or complaint of injury.

- f) The FIT supervisor or commander will respond to the FIT office and arrange for ICV downloads as well as witness statements from all witness officers prior to the end of their shift(s) unless impracticable.
- g) When available, the FIT detectives will respond to the FIT office, and will conduct in-person interviews of the involved officers (consistent with OIS interviews).
- h) The FIT supervisor or commander will arrange for the involved officers to submit a Response to Resistance written statement as soon as practicable.
- i) The FIT sergeant or commander will be responsible for sending an email notification of a FIT investigated Response to Resistance, which shall be forwarded to the involved officer's chain of command up to the COP, as well as the Investigation Bureau Commander. This email notification shall contain basic information about the incident.
- j) The FIT commander will prepare a use of force report and packet to present to the commander of the Investigation Bureau for review.
- k) The FIT commander will present the completed investigation to the commander of the Investigation Bureau for review. This review will be completed within three business days. The investigation will then be forwarded to the involved officer's chain of command. After this review has been completed, the FIT commander will be responsible for presenting the investigation to the Response to Resistance Review Board. Consistent with current officer-involved shooting protocols, any presentations to the command staff will also be the responsibility of the FIT commander.
- l) If at any time during the investigation, information is obtained that suggests either criminal liability on the part of any officer, or intentional misconduct on the part of any officer, the FIT commander will be responsible for notifying the command staff, and taking one of the two following actions:
 - i. Criminal Liability – If at any time information is obtained that suggests that an officer may have committed a crime during the Response to Resistance incident, the investigation will

immediately be referred to the SPD OPA. If the OPA agrees that a criminal investigation is appropriate, they will refer the investigation back to the Homicide Unit commander, for assignment to an uninvolved Homicide sergeant for bifurcated criminal and administrative investigations using a “Clean Team” and “Exposed Team” approach. All information gathered during the administrative investigation to date will be screened through a Case Master, who will ensure no inadmissible information is passed on to the Homicide sergeant doing the criminal case. A representative of the King County Prosecutor’s Office will be consulted as necessary during the course of the criminal investigation. While the administrative investigation will continue, the criminal investigation will have priority over witnesses and evidence.

- ii. Intentional Misconduct – If at any time information is obtained that an officer may have committed intentional misconduct during the Response to Resistance incident, the OPA Director will be advised and the misconduct investigation referred to their office. The assigned FIT investigator will continue to complete the use of force investigation.

K. Response to Resistance Review Board (RRRB)

104. The Response to Resistance Review Board will examine all Type II and Type III Responses to Resistance.

105. Board Membership: The RRRB members will consist of: the Assistant Chief of the Patrol Operations Bureau (who shall chair the Board); the Captain of the Training Section; the Lieutenant of the Training Section; two Sergeants from the Training Section; one representative of the permanent rank of Lieutenant or Sergeant from each precinct, selected by each precinct Captain; and a representative from the PSS. The Chair may include any subject matter experts the Chair feels would be helpful in reviewing particular incidents.

106. Training: Each member will receive a minimum of eight hours of training on an annual basis, including legal updates regarding use of force and curriculum utilized by the Training Section regarding use of force.

107. The Board may consult with other advisors as necessary.

108. Review: The Board will review each Response to Resistance Packet to determine whether the response was consistent with law and policy, whether the tactics used were effective and consistent with training, whether any equipment used was used appropriately, whether there were any deficiencies in the investigation or review process, and may consider any other questions raised by the materials.

109. If training or other deficiencies are noted, the RRRB shall return the Response to Resistance packet to the officer's Bureau Commander for a determination of whether the officer should be recommended for retraining and/or discipline.

110. Corrective Action: The RRRB shall not make recommendations concerning discipline; however, the Chair of the RRRB is obligated to ensure a referral to OPA is made if potential misconduct is discovered in the review process. Should policy, equipment or training deficiencies be noted in the review process, the RRRB Chair will ensure that they are brought to the attention of the relevant commanding officer for appropriate action. The Bureau Commander of the officer involved with the use of force shall have the final responsibility regarding retraining or recommending discipline to the Chief of Police.

L. Response to Resistance Training

111. SPD shall provide all SPD officers with use of force training based upon applicable law and SPD policy. SPD shall coordinate and review all use of force policy and training to ensure quality, consistency, and compliance with the Constitution, Washington law, this Agreement, and SPD policy. SPD's use of force training will address the following use of force topics:

- a) SPD's use of force policy, use of force reporting requirements, and the mechanics of efficiently writing an informative use of force report;
- b) proper use of force decision making;
- c) the Fourth Amendment and related law;

- d) role-playing scenarios and interactive exercises that illustrate proper use of force decision-making, including training officers on the importance and impact of ethical decision-making and peer intervention;
- e) the proper deployment and use of all intermediate weapons or technologies, including batons, OC Spray, and CEDs;
- f) the use of force that is appropriate and reasonable based on the amount of force and resistance encountered; and
- g) basic crisis intervention and interacting with people with mental illnesses, including instruction on de-escalation strategies, as further described below.

M. Crisis Intervention

112. SPD shall continue its work to minimize the use of force against individuals in behavioral or mental health crisis, including individuals who appear to be under the influence of drugs or alcohol, and direct such individuals to the appropriate services where possible. SPD will provide Crisis Intervention Training to a sufficient number of patrol officers so that CIT trained officers are available on all shifts to respond to incidents or calls involving individuals known or suspected to be suffering from mental illness, substance abuse or a behavioral crisis.

N. Response to Resistance and the Early Identification System

113. SPD shall review and adjust, where appropriate, the threshold levels for each of the current EIS indicator criteria.

114. SPD shall revise its EIS policy to include a mechanism for intervention of an officer whose activity has already triggered a threshold for one of the EIS indicator criteria, so that the threshold level is lower if EIS is triggered again. For example, if an officer has participated in seven uses of force in a six-month period, SPD shall design a protocol for intervention before the officer is put in a position where he/she can participate in another seven uses of force.

115. SPD will monitor the EIS to ensure it is meeting its objective of providing SPD with notice before behaviors become problematic. This includes adding or deleting triggering events.

116. SPD shall work to expand EIS so that it also tracks supervisor, squad, or unit trends. This provides invaluable information about supervisory behaviors that may be problematic.

IV. MONITOR

A. Pre-Agreement Activities

117. Prior to DOJ and the City entering into a settlement agreement to implement the Reform Plan, the Parties will work together to develop the specific policies, procedures and training that will be required under the agreement. The City will retain a use of force expert who will assist SPD in crafting the new policies, procedures and training programs. The Parties may also seek assistance from the Community Oriented Police Services (COPS), National Institute of Justice, Police Executive Research Forum (PERF), academic institutions and other similar organizations.

118. The Parties will work for approximately six months to finalize a settlement agreement which will contain the specific policies, procedures and practices related to use of force by SPD officers. Prior to entering into a settlement agreement, the Parties will jointly select a Monitor that will oversee the implementation of the agreement. The Monitor may be selected from among the experts retained to assist with the development of the agreement, or the Monitor may be selected from other qualified persons.

119. Once a Monitor has been retained, the DOJ, the City and the Monitor will work together to develop a monitoring plan before the settlement agreement is signed. The monitoring plan will be incorporated into the settlement agreement and will specify all of the metrics that will be collected by SPD and provided to the Monitor for assessment and reporting.

B. Role of the Monitor

120. The Monitor will have the following responsibilities:

- a) Compliance Review: The role of the Monitor is to verify that all of the substantive reform measures included in the settlement agreement are implemented as agreed to by the Parties. The Monitor shall regularly conduct compliance and progress reviews to assess the extent to which SPD has implemented and complied with all of the measures required by

the settlement agreement. If a Party fails to implement any of the measures required by the settlement agreement, the Monitor will work with the Party to achieve compliance. If those efforts prove to be unsuccessful, then the Monitor will report the Party's noncompliance to the Court.

- b) Reporting: The Monitor will issue annual public reports detailing the Parties' compliance with the settlement agreement.
- c) Reform Plan Recommendations: The Monitor or the City may recommend modifications or additions to the Reform Plan within the scope of the settlement agreement. If the City accepts the proposed modifications or additions, those changes will be presented to DOJ for approval. If DOJ approves the changes then the settlement agreement may be amended and filed with the Court. The Monitor may not require or recommend to the Court that the City take any actions not specifically identified in this Agreement. The Monitor may not introduce any new terms or requirements to this Agreement without the consent of both the City and the DOJ and approval by the Court.
- d) Technical Assistance: SPD may request technical assistance from the Monitor as needed. SPD has the discretion to decide whether or not to utilize the Monitor's advice.

C. Selection of the Monitor

121. The Parties shall jointly select a Monitor to oversee the terms of the Agreement.

122. The Monitor shall be subject to the supervision and orders of the Court, consistent with this Agreement. The Monitor shall only have the duties, responsibilities, and authority conferred by this Agreement. The Monitor shall not, and is not intended to, replace or assume the role and duties of any City or SPD staff or officials, including the Chief of Police.

123. The Monitor will be paid for by the City. The minimum annual budget for the services provided by the Monitor will be \$_____. The annual budget for the Monitor shall not exceed \$_____. If the Parties and the Monitor agree that additional funding is needed above this cap, the Parties may seek additional financial

resources from sources outside of the City. The Parties have agreed that the Monitor's budget for the first 12 months of this agreement will be \$_____. Future annual budgets for the Monitor will be determined by the City in consultation with the Monitor and DOJ. The budget shall be submitted to the Court for approval. Any changes to the Monitor's budget must be approved by both the City and DOJ before submission to the Court.

124. Prior to appointment, the Monitor shall provide the Parties with a detailed budget and staffing proposal. The proposal shall describe the qualifications of all the persons or entities to be hired or employed by the Monitor as well as the monitoring tasks that they will perform. The Monitor, at any time after his/her appointment, may request to be allowed to hire, employ, or contact such additional persons or entities as are reasonably necessary to perform the tasks assigned to the Monitor by this Agreement provided that those expenditures fall within the approved budget. The Monitor shall notify the City and DOJ in writing if the Monitor wishes to select such additional persons or entities. The notice shall identify and describe the qualifications of the person or entity to be hired or employed and the monitoring task to be performed. The City and DOJ must both approve of the person or entity before they may be hired or employed. Any person or entity hired or otherwise retained by the Monitor shall be subject to the provisions of this Agreement.

125. In the event that the Monitor is no longer able to perform his/her functions, within 30 days thereof, the City and DOJ shall together select and advise the Court of the selection of a replacement Monitor, acceptable to both. The Parties' selection of the Monitor shall be made pursuant to a method jointly established by DOJ and the City.

126. Should either of the Parties to this Agreement determine that the Monitor or any member of the Monitor's consulting teams, their agents, employees, or independent contractors have exceeded their authority or failed to satisfactorily perform the duties required by this Agreement, the Party may petition the Court for such relief as the Court deems appropriate, including replacement of the Monitor, and/or any individual members, agents, employees, or independent contractors. Any Party bringing such a

petition is required to meet and confer with the other Party at least 21 days prior to such a petition in a good faith attempt to resolve the concern.

D. SPD Compliance Coordinator

127. The Parties agree that SPD will hire and retain, or reassign a current SPD employee for the duration of this Agreement, to serve as a full-time SPD Compliance Coordinator. The Compliance Coordinator will serve as a liaison between SPD, the Monitor and DOJ, and will assist with SPD's compliance with this Agreement. At a minimum, the Compliance Coordinator will:

- a) coordinate SPD's compliance and implementation activities;
- b) facilitate the provision of data, documents and other access to SPD employees, and material to the Monitor and DOJ, as needed;
- c) ensure that all documents and records are maintained as provided in this Agreement; and
- d) assist in assigning compliance tasks to SPD personnel, as directed by the COP or his/her designee. The SPD Compliance Coordinator will take primary responsibility for collecting the information the Monitor requires to carry out the terms of this Agreement.

E. Reports and Records

128. Within 120 days following Court approval of the Agreement, and every four months thereafter until the Agreement is terminated, the City shall file with the Monitor a status report, including any supporting documentation, delineating all steps taken during the reporting period to comply with this Agreement.

129. During the term of this Agreement, and subject to record retention requirements and procedures imposed by state or local law, any existing consent decree, or any relevant collective bargaining agreement, the Parties shall maintain all records documenting compliance with this Agreement and all documents required by or developed pursuant to this Agreement.

130. The Monitor shall issue annual public reports to the Parties detailing the Parties' compliance with and implementation of this Agreement. These reports shall not include information specifically identifying any individual officer. Drafts of the status

reports will be provided to each of the Parties at least one month prior to publication to afford the Parties an opportunity to identify factual errors.

131. The City shall provide the Monitor with reasonable administrative support, including office space and supplies. For the purpose of implementing this Agreement, the Monitor shall have reasonable access to all documents in SPD's closed criminal investigation files. The Monitor may request access to specific open investigative files. The COP has the discretion to grant or deny the Monitor access to those open investigative files.

132. All non-public information provided to the Monitor or DOJ, whether by the City or SPD, shall be maintained in a confidential manner. Other than as expressly provided in this Agreement, this Agreement shall not be deemed a waiver of any privilege or right the City or SPD may assert, including those recognized at common law or created by statute, rule or regulation, against any other person or entity with respect to the disclosure of any document.

133. The Monitor shall not issue statements or make findings with regard to any act or omission of any Party, or their agents or representatives, except as required by the terms of this Agreement. The Monitor may testify in any enforcement proceedings regarding provisions of this Agreement and the Parties' compliance. The Monitor shall not testify in any other litigation or proceeding with regard to any act or omission of any Party, or any of their agents, representatives or employees, related to this Agreement or regarding any matter or subject that the Monitor may have received knowledge of as a result of his/her performance under this Agreement. Unless such conflict is waived by the Parties, neither the Monitor nor a member of his/her staff shall accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the City or its departments, officers, agents or employees. The Parties agree to request an appropriate protective order for non-public records in the possession of the Monitor.

134. If the Monitor determines in a report made pursuant to this Agreement that the City is not in substantial compliance with a provision of the Agreement, the Monitor

shall notify the Special Litigation Section of DOJ in writing. Within 60 days after receiving written notification from the Monitor, the DOJ may move the Court for specific performance of the terms of this agreement to correct persistent substantial non-compliance. The DOJ has the burden of proving substantial non-compliance by a preponderance of the evidence. If the Court determines that the City is not in substantial compliance with a provision of the DOJ Agreement and if the City fails to remedy that non-compliance within 60 days of the Court's determination, then the Court shall issue an order directing such compliance. Any Party may appeal said order pursuant to Rule 53.

V. TERMINATION AND MODIFICATION OF THE AGREEMENT

A. Court Jurisdiction, Modification of the Agreement, and Enforcement

135. To ensure that the requirements of this Agreement are properly and timely implemented, the Court shall retain jurisdiction of this action for all purposes, including but not limited to any disputed changes to policies, procedures, and practices, until such time as the City has achieved full and effective compliance with this Agreement and maintained such compliance for no less than two years.

136. The Monitor, City, and DOJ may jointly stipulate to make changes, modifications, and amendments to this Agreement. Such changes, modifications, and amendments to this Agreement shall be encouraged when the Parties agree, or where the reviews, assessments, and/or audits of the Monitor demonstrate, that this Agreement provision as drafted is not furthering the purpose of this Agreement or that there is a preferable alternative that will achieve the same purpose. The Parties may jointly move for approval of any proposed changes, modifications, and/or amendments, which will become effective upon approval by the Court.

B. Termination of the Agreement

137. This agreement shall automatically expire after four years from the Effective Date unless:

- a) The Parties agree to extend the Agreement beyond the termination date; the parties shall file a motion with the court to extend the expiration date at least three months prior to the current expiration date; or

- b) DOJ files a motion to extend the expiration date at least six months prior to the current expiration date. At least 21 days prior to filing the motion, the Parties shall meet and confer at a mutually agreeable time as to the status of compliance. If the DOJ moves to extend the expiration date of this Agreement, the City will have 30 days after the receipt of the DOJ's motion to object to the motion. If City does not object, the Court may grant the DOJ's motion. If City does make an objection, the Court shall hold a hearing on the motion and the burden shall be on DOJ to demonstrate by a preponderance of the evidence that the City is not in substantial compliance with this Agreement and the City has not maintained such compliance for at least two years.

138. The City may petition the Court to terminate this Agreement prior to the scheduled expiration date. In the case of early termination sought by the City, prior to filing a motion to terminate, the City agrees to notify DOJ in writing when the City has determined that SPD is in substantial compliance with this Agreement and that such compliance has been maintained for no less than two years. No later than 21 days thereafter, the Parties shall meet and confer at a mutually agreeable time as to the status of compliance. If, after a reasonable period of consultation and the completion of any audit or evaluation that DOJ and/or the Monitor may wish to undertake, including on-site observations, document review, or interviews with the City and SPD's personnel, the Parties cannot resolve any compliance issues, the City may file a motion to terminate this Agreement. If the City moves for termination of this Agreement, DOJ will have 30 days after the receipt of the City's motion to file an objection to the motion. If DOJ does not file an objection, the Court may grant the City's motion to terminate this Agreement. If DOJ does file an objection, the Court shall hold a hearing on the motion and the burden shall be on the City to demonstrate by a preponderance of the evidence that the City has been in full and effective compliance with this Agreement for the preceding two years.

139. This agreement may not be extended beyond six years from the Effective Date.